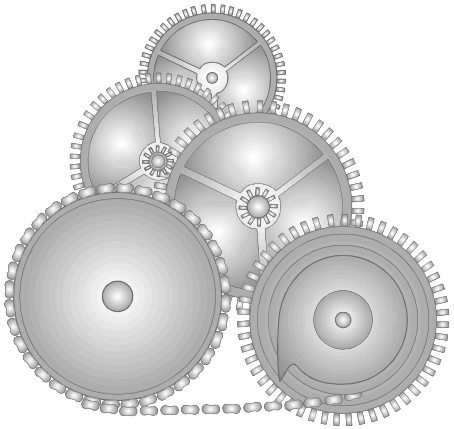
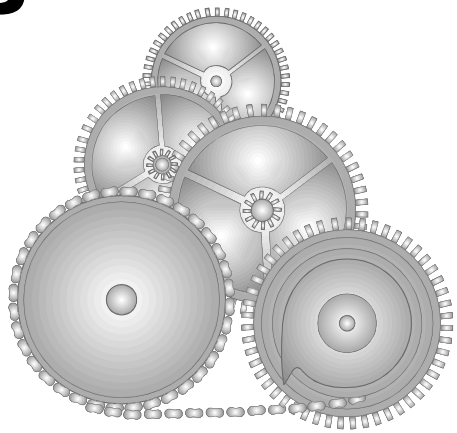
COMMERCIAL ITEM ACQUISITIONS

THE NEW WAY OF DOING BUSINESS





BRIEFER:

MARGIE TYNER/PKPB

COURSE OUTLINE

Part 1 Why the Change? Why Commercial?

Part 2 New Definition of a Commercial Item/Service

Part 3 Determining if your Item/Service is Commercial

Part 4 Requirements Definition & Market Research

Part 5 What does a Commercial Solicitation/Contract look like?

Part 6 Streamlined Procedures- Solicitations

Part 7 Understanding Commercial Financing

COURSE OUTLINE

Part 1 Why the Change? Why Commercial?

Part 2 New Definition of a Commercial Item/Service

Part 3 Determining if your Item/Service is Commercial

Part 4 Requirements Definition & Market Research

Part 5 What does a Commercial Solicitation/Contract look like?

Part 6 Streamlined Procedures - Solicitations

Part 7 Understanding Commercial Financing

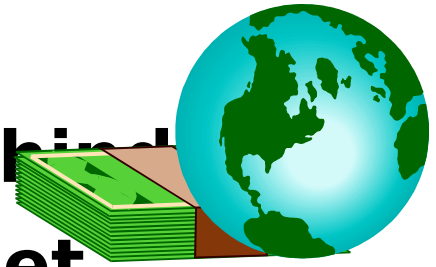
Why Commercial?

PKPB

- **FASA established a *STATUTORY* preference for commercial contracting**

  buy commercial unless you can justify commercial will not meet the requirement

- **Redefined commercial item**
- **Policies resemble commercial marketplace**
- **Use commercial practices to streamline acquisition process**
- **Rapid technology leaving DoD behind**
- **Declining DoD procurement budget**



REGULATIONS, PART II

PKPB

FARA - Federal Acquisition Reform Act of 1996

- **Expanded FASA definitions**
- **Must use some form of price analysis for negotiation position and final price determination**
- **Cannot request certified cost or pricing data**
- **Simplified Acquisition Procedures (SAP) increased to $5M**

COURSE OUTLINE

Part 1 Why the Change?

Part 2 New Definition of a Commercial Item/Service

Part 3 Determining if your Item/Service is Commercial

Part 4 Requirements Definition & Market Research

Part 5 What does a Commercial Solicitation/Contract look like?

Part 6 Streamlined Procedures - Solicitations

Part 7 Understanding Commercial Financing

COMMERCIAL ITEM DEFINITION

PKPB

- Defined in FAR 2.101, it states in part…

- Any item ***<u>of a type</u>***, other than real property, used for non-governmental purposes. That has been sold, leased, or licensed to the general public or ***<u>offered</u>*** to the general public

COMMERCIAL ITEM DEFINITION (cont'd.)

PKPB

- Any Item that ***evolved*** from an item described above and is not yet available , ***BUT*** will be available in the commercial marketplace in time to satisfy the delivery requirements of a Gov't solicitation

- Any item that would satisfy these criteria except for customary modifications or minor modifications typically not available in the marketplace.

COMMERCIAL ITEM DEFINITION (Cont'd)

PKPB

- **Services offered in support of a commercial supply item to the Government, if the source of such services:**
  - **offers such services simultaneously to the general public under similar terms and conditions, and**
  - **offers to use the same work force as the source uses for providing such services to the general public**

COMMERCIAL ITEM DEFINITION (Cont'd)

PKPB

- **Other services *Of A Type* offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed with standard terms and conditions**

COURSE OUTLINE

Part 1 Why the Change?

Part 2 New Definition of a Commercial Item/Service

Part 3 Determining if Your Item/Service is Commercial

Part 4 Requirements Definition & Market Research

Part 5 What does a Commercial Solicitation/Contract look like?

Part 6 Streamlined Procedures - Solicitations

Part 7 Understanding Commercial Financing

MARKET RESEARCH

PKPB

DEFINITION: ***The collecting and analyzing of information about the market's capabilities to satisfy agency needs.***

- **Level of effort consistent with the value and complexity of the procurement**
- **Ongoing process to stay abreast of current advances in technologies and products**
  - **Key is to focus on the industry, not just a particular company**
- **DOCUMENT YOUR FILE**

MARKET RESEARCH

PKPB

- **RAFB Instruction, Market Research Process, in review**

Team Lead is Engineering

Program Manager

Logistics

User

DCMC & DFAS

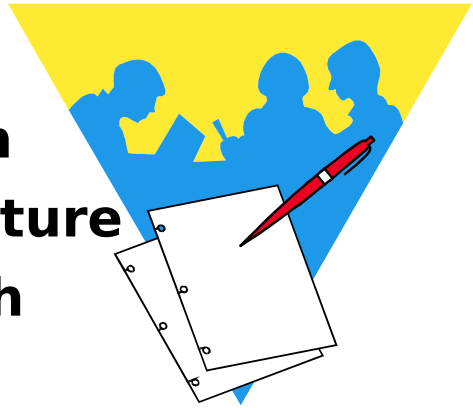
Vendors and members of industry trade associations, if appropriate

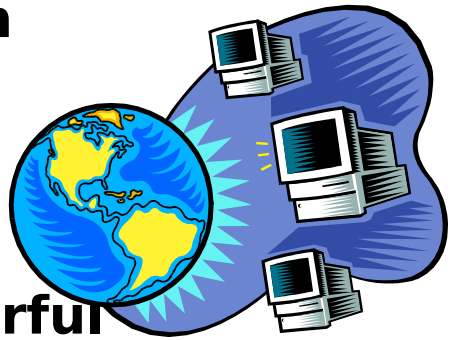
  - **POC: Mark Leslein/AE/6-0281**

MARKET RESEARCH TECHNIQUES

PKPB

- Contact experts (Mark Leslein/AE)
- Review results of recent market research
- Review catalogs and other product literature
- Conduct pre-solicitation conferences with potential vendors
- Publish Requests for Information (RFIs) in appropriate journals/magazines
- Attend trade shows and workshops
- Contact professional associations
- Search on the Internet — extremely powerful tool





MARKET RESEARCH

PKPB

- **If ***ONE*** commercial item or source is found, procurement proceeds in accordance with FAR Part 12**
- **If commercial item is not found, requirement should be reviewed to see if it can be restated to permit commercial item**
- **If FAR Part 12 is not used, the synopsis shall include notice required by FAR 5.201 (note 26)**

COURSE OUTLINE

Part 1 Why the Change?

Part 2 New Definition of a Commercial Item/Service

Part 3 Determining if your Item/Service is Commercial

Part 4 Requirements Definition & Market Research

Part 5 What does a Commercial Solicitation/Contract look like?

Part 6 Streamlined Procedures – Solicitations

Part 7 Understanding Commercial Financing

SOLICITATION/CONTRACT FORM

PKPB

- **Standard Form 1449 shall be used when issuing written solicitations or awarding contracts for commercial items**
  - **Blocks 27a & 27b indicate the clauses & addenda**

- **Other forms are incompatible with FAR Part 12 because they reference FAR clauses not used for commercial items or they reference the Uniform Contract Format which is not being used (FAR 12.204)**

SOLICITATION PROVISIONS AND CONTRACT CLAUSES

PKPB

- **FAR 52.212-1, Instructions to Offerors – Commercial Items**
- **FAR 52.212-2, Evaluation - Commercial Items**
- **FAR 52.212-3, Offeror Representations and Certifications - Commercial Items**
- **FAR 52.212-4, Contract Terms and Conditions, Commercial Items**
- **FAR 52.212-5, Contractor Terms and Conditions Required to Implement Statutes or Executive Orders, Commercial Items**

52.212-4

PKPB

- Inspection/acceptance
- Assignment*
- Changes
- Disputes*
- Excusable delays
- Invoice*
- Patent indemnity
- Payment*
- Risk of loss
- Taxes
- Termination for government convenience
- Termination for cause
- Title
- Warranty
- Limitation of liability
- Other compliances*
- Compliance with laws unique to government contracts*
- Order of precedence

* *These clauses may not be tailored*

COURSE OUTLINE

Part 1 Why the Change?

Part 2 New Definition of a Commercial Item/Service

Part 3 Determining if your Item/Service is Commercial

Part 4 Requirements Definition & Market Research

Part 5 What does a Commercial Solicitation/Contract look like?

Part 6 Streamlined Procedures – Solicitations

Part 7 Understanding Commercial Financing

STREAMLINED PROCEDURES SOLICITATIONS

PKPB

- **Combined CBD synopsis and the issuance of the solicitation into one document (FAR 12.603)**
  - **for simple solicitations only**
  - **limited to 12,000 textual characters**
  - **a separate CBD synopsis 15 days prior to issuance of the solicitation is <u>NOT</u> required**
- **SF 1449 not used - required statements, notices, are in synopsis**
- **Synopsis must inform offerors a solicitation <u>will not</u> be issued.**

COURSE OUTLINE

Part 1 Why the Change?

Part 2 New Definition of a Commercial Item/Service

Part 3 Determining if your Item/Service is Commercial

Part 4 Requirements Definition & Market Research

Part 5 What does a Commercial Solicitation/Contract look like?

Part 6 Streamlined Procedures - Solicitations

Part 7 Understanding Commercial Financing

COMMERCIAL ITEM FINANCING
(FAR 32.2)

PKPB

- **Standard commercial practice is payment upon delivery**
- **Customary market practice for some commercial items**

- **Must request consideration**
- **If market research confirms purchaser financing is customary, the CO may offer financing after determination it is appropriate/customary & in the best interest of the U.S.**
- **Criteria at FAR 32.202 must be met**

COMMERCIAL CONTRACT

PKPB